IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5912 OF 2006

Shri Rohidas Krishna Madhavi ..Petitioner.

V/s.

Shri Namdeo Tukaram Gharat ..Respondent.

Ms.Gauri Godse for petitioner.

CORAM : R.M.SAVANT, J.

DATED : 6TH JUNE, 2007.

P.C. :-

Heard Ms.Godse for the petitioner. None appears for the respondent though served.

2. This petition under Article 227 of the Constitution of India impugns the order dated 13th June, 2006 passed by the District Judge, Alibag, Dist. Raigad. By the said order, the petitioner's application for condonation of delay in filing the appeal has been rejected.

3. The factual matrix involved in the case is that the petitioner / original plaintiff filed R.C.S. No.51/1997 in the Court of Civil Judge, J.D. Uran for temporary injunction against the respondent for removal of encroachment caused by him and for possession of the

portion encroached after removal of the encroachment and also for restraining the respondent from erecting a compound wall on the suit property. The respondent herein has filed written statement and denied the said contentions. The said suit came to be dismissed by Judgment and order dated 3rd January, 2005. The petitioner being aggrieved by the said Judgment and order of the trial Court filed an Appeal in the Court of District Judge, Alibag, Dist. Raigad. In filing the said appeal, there was a delay of 1 year, 1 month and 6 days. The petitioner, therefore, filed Civil Misc. Application No.38/2006. The petitioner in paragraph Nos.4, 5 & 6 has stated the reasons for the delay. The sum and substance of the averments is that in spite of best efforts, the appeal could be filed in time and that a lay person like the petitioner is not aware of the procedure involved in filing an appeal. The petitioner has also attributed the delay to his illness in support of which a medical certificate was also annexed to the application. The petitioner has also filed an affidavit in support of the said application.

4. Heard the learned counsel for the petitioner. The reasons mentioned in the application, in my view, make out sufficient cause for condonation

of delay in filing the appeal. It is well settled that a party should not be thrown out on a technical ground and an approach which advances substantial cause of justice should be adopted. In that view of the matter, the impugned order dated 13th June, 2006 is required to be set aside and the delay in filing the appeal is required to be condoned.

5. Petitioner would be at liberty to make appropriate application for interim relief pending the appeal. If such an application is made, the Appellate Court to consider the same on its own merits and in accordance with law.

6. Rule is accordingly made absolute in the aforesaid terms with no order as to costs.

(R.M.SAVANT, J.)